

GAO

United States General Accounting Office  
Office of General Counsel



137235

Digests of Unpublished  
Decisions of the  
Comptroller General  
of the United States

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# United States General Accounting Office

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## **PREFACE**

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions in connection with claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, 98 Pub. L. 369, July 18, 1984.

Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text of these decisions are available through the circulation of individual copies and should be cited by the appropriate file number and date, e.g., B-219654, Sept. 30, 1986.

The remaining 10 percent of decisions rendered are published in full text. Copies of these decisions are available through the circulation of individual copies, the issuance of monthly pamphlets and annual volumes. Decisions appearing in these volumes should be cited by volume, page number and year issued, e.g., 65 Comp. Gen. 624 (1986).

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## **APPROPRIATIONS/FINANCIAL MANAGEMENT**

### **APPROPRIATIONS/FINANCIAL MANAGEMENT**

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Foreign governments	

### **APPROPRIATIONS/FINANCIAL MANAGEMENT**

Claims Against Government
Statutes of limitation
Waiver
GAO authority

The Barring Act, 31 U.S.C. § 3702(b)(1), provides that a claim against the government must be received in the General Accounting Office (GAO) within 6 years of accrual to be considered on its merits, and GAO has no authority to waive the time limitation. Therefore, claims for wartime compensation by former members of a World War II Filipino guerrilla organization first received in GAO in 1987 are barred from consideration as being untimely received. In any event, such claims are for presentation to and adjudication by the Philippine government under a June 29, 1967, agreement, whereby the United States agreed to transfer funds to the Philippine government in full settlement of Philippine guerrilla claims and the Philippine government agreed to receive and adjudicate such claims.



**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability    B-229257    June 10, 1988**

**Purpose availability**

**Administrative agencies**

**Investigation**

**Competitive restrictions**

15 U.S.C. §§ 46(a) and 46(f) grant the Federal Trade Commission (FTC) authority to investigate and report to the public on issues that unduly restrict competition. These subsections would permit the FTC to investigate and report on statutes that grant the Postal Service a monopoly in the delivery of letter class mail.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability**

**Purpose availability**

**Specific purpose restrictions**

**Lobbying**

Speeches and statements by the Chairman, Federal Trade Commission advocating repeal of statutes that grant the Postal Service a monopoly in the delivery of letter class mail do not violate restrictions on lobbying contained in 18 U.S.C. § 1913 where members of the public are not urged to contact their congressional representatives regarding this issue.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability**

**Purpose availability**

**Specific purpose restrictions**

**Publicity/propaganda**

Questions prepared by the Federal Trade Commission (FTC) and given to the press for use in questioning the Postmaster General about weaknesses in the Postal Service do not violate the FTC's fiscal year 1987 appropriations act which prohibits expenditures for publicity and propaganda, since the FTC is identified as the source of such questions.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability**

**B-231152 June 10, 1988**

**Purpose availability**

**Cost reimbursement**

**Publicity/propaganda**

**Exports**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability**

**Purpose availability**

**Specific purpose restrictions**

**Federal work programs**

**Foreign countries**

In response to a request for comments, the General Accounting Office has no objection to Federal Acquisition Circular (FAC) No. 84-36, which amends Federal Acquisition Regulation (FAR) Parts 25, 31 and 52, to implement two sections of the continuing resolution for fiscal year 1988. H.J. Res. No. 395, Pub. L. 100-202. The first amendment precludes the obligation and expenditure of current Fiscal Year funds for public works contracts with foreign contractors and supplies from countries listed by the United States Trade Representative as discriminating against United States firms in conducting public works acquisitions. The second amendment permits the reimbursement of reasonable costs incurred to promote American aerospace exports at domestic and international exhibits.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers      B-231505    June 13, 1988**

**Cashiers**

**Relief**

**Illegal/improper payments**

**Forgeries**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**

**Disbursing officers**

**Relief**

**Illegal/improper payments**

**Forgeries**

U.S. Army Finance officer is relieved of liability for the improper payments of checks on forged endorsements made by subordinate cashiers where the officer maintained and supervised an adequate system of procedures designed to prevent such improper payments. The cashiers are also relieved where they complied with existing procedures and the loss resulted from criminal activity over which the officer and the cashier had no control.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers      B-230607    June 20, 1988**

**Cashiers**

**Relief**

**Physical losses**

**Theft**

Cashier for Voice of America Bureau is relieved of liability for stolen imprest funds pursuant to 31 U.S.C. § 3527(a). Although cashiers are held to a standard of strict liability, relief is granted if the evidence clearly shows a theft occurred and an investigation reveals no connection between the accountable officer and the theft.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**

**B-192567 June 21, 1988**

**Cashiers**

**Relief**

**Physical losses**

**Theft**

Relief denied to accountable officer who failed to see that established office procedures for securing cash were carried out. Such negligence resulted in accountable officer's decision to store cash in a bar-locking file cabinet which was not approved for such storage, from where cash was subsequently stolen.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**

**B-231503 June 28, 1988**

**Disbursing officers**

**Relief**

**Illegal/improper payments**

**Unilateral errors**

A supervisory disbursing official is relieved from liability under 31 U.S.C. § 3527(c) for an improper payment made by a subordinate. The improper payment occurred when the subordinate paid a voucher which showed X's in the amount due block to show that the voucher was not for payment. Despite absence of evidence in the record that the disbursing official supervised his subordinate by maintaining an adequate system of procedures and controls to safeguard government funds and took steps to see that such a system was being effectively implemented, the improper payment appears to be the error of the subordinate and not the result of bad faith or lack of reasonable care by the supervisor.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability B-211373.2 June 30, 1988**

**Purpose availability**

**Specific purpose restrictions**

**Publicity/propaganda**

The nonreimbursable details of United States Information Agency (USIA) employees to the State Department's Office of Public Diplomacy for Latin America may have violated 22 U.S.C. § 1461-1a, which prohibits USIA from utilizing any portion of its appropriated funds to influence public opinion in the United States, if it can be shown that the individuals detailed performed duties directly related to influencing domestic public opinion.

## **CIVILIAN PERSONNEL**

### **CIVILIAN PERSONNEL**

**B-226589 June 7, 1988**

#### **Relocation**

#### **Household goods**

#### **Definition**

#### **Restrictions**

A transferred employee included a "farm type tractor" in his shipment of household goods by a Government Bill of Lading. Since farming vehicles are excluded from the types of household goods that may be shipped at government expense; the employing agency should determine whether the tractor was properly shipped as household goods. If the tractor does not qualify as household goods, the employee should be assessed for its shipment in the same manner as for the canoe.

### **CIVILIAN PERSONNEL**

#### **Relocation**

#### **Household goods**

#### **Vessels**

#### **Restrictions**

#### **Liability**

A transferred employee who included a canoe in his shipment of household goods by a Government Bill of Lading must bear the expense of that shipment since boats are expressly excluded by the Federal Travel Regulations from the definition of "household goods" which may be shipped at government expense. There is no authority to base the employee's liability on the actual weight of the canoe rather than on the carrier's weight additive prescribed by the applicable rate tender.

**CIVILIAN PERSONNEL****B-230496 June 7, 1988****Compensation****Retroactive compensation****Eligibility****Adverse personnel actions****Determination**

An employee is not entitled to backpay under the Back Pay Act, 5 U.S.C. § 5596 (1982), for the difference between a grade GS-5 and a grade GS-6 salary where there is no evidence of an unjustified or unwarranted personnel action. The employee was downgraded from a supervisory position prior to completion of a probationary period. See 5 U.S.C. § 3321 (1982). Further, neither the Back Pay Act nor any other statutory authority provides for payment of compensatory damages.

**CIVILIAN PERSONNEL****B-229290 June 10, 1988****Compensation****Retroactive compensation****Eligibility****Adverse personnel actions****Determination**

The Federal Election Commission is advised that there is no authority to retroactively grant career-ladder promotions withheld for budgetary reasons since their promotion policy is discretionary and a failure to promote would not violate policy, regulations, or a negotiated labor agreement. A federal employee is not entitled to the benefit of a position until he has been duly appointed to it, and the Back Pay Act would not apply where a determination could not be made that an unjustified or unwarranted personnel action occurred.

**Relocation****Expenses****Liability****Breach of service agreements**

An employee of the Department of Agriculture (USDA), who resigned from her position within 12 months of a transfer, is obligated to repay the government the amount paid by the government in connection with her transfer. Her separation was not for reasons beyond the employee's control and acceptable to USDA as provided in 5 U.S.C. § 5724(i) (1982). The assessment of interest or other appropriate charges on this debt is governed by 31 U.S.C. § 3717 (1982) and 4 C.F.R. § 102.13 (1988).

**CIVILIAN PERSONNEL****B-230366 June 27, 1988****Leaves of Absence****Annual leave****Computation errors****Error correction****Unused leave balances**

An employee's annual leave account was erroneously overcredited due to the agency's error in calculating her service computation date and, thus, the number of hours of leave she was to accrue each pay period. Since there was a positive balance remaining in the employee's leave account after the agency adjusted her account to correct the administrative error, there was no overpayment of pay or allowances which may be considered for waiver under 5 U.S.C. § 5584.



**CIVILIAN PERSONNEL  
Leaves of Absence**

**B-205359 June 28, 1988**

**Sick leave**

**Advances**

**Basic compensation**

**Amount determination**

An employee's claim for additional compensation for use of advance sick leave is denied. Sick leave which is advanced and used, but which is not compensated for until after a pay rate increase, may not be compensated for at the higher rate of pay. Leave which is used only has the value of the employee's rate of pay for the pay period in which it is to be charged.

**CIVILIAN PERSONNEL  
Compensation**

**B-231697 June 28, 1988**

**Presidential appointment**

**Temporary appointment**

**Time restrictions**

In 40 U.S.C. § 751(c), Congress has specifically provided for an acting head of GSA when the position of Administrator is vacant, and has empowered the President to designate any officer of the government to serve in that capacity. Therefore, the current Acting GSA Administrator, designated by President Reagan under 40 U.S.C. § 751(c), is not subject to the 30-day limit placed on certain temporary appointments by 5 U.S.C. § 3348.

**CIVILIAN PERSONNEL**  
**Compensation**  
**Details**  
**Reimbursement**  
**Exemptions**

**B-211373.2 June 30, 1988**

Our interpretation of 22 U.S.C. § 2685 covering details of State Department employees to other agencies is as follows. The provision requires executive agencies to reimburse the State Department for the amount paid in salary and allowances to the detailees with three exceptions. The first exception is that nonreimbursable details are permissible when the State Department has entered into an agreement with an agency to detail, assign or otherwise make available substantially the same number of officers and employees and such numbers with respect to a fiscal year are actually detailed. The second exception to reimbursement applies when the period of the detail does not exceed one year. The third exception is that reimbursement is not required when the number of officers or employees detailed for a period of time between 13 months and 2 years does not exceed 15 at any one time. This third exception means reimbursement is not required for up to 15 detailees who either have been assigned to a detail that is expected to last over a year or who have remained on detail for over 12 months up to 2 years.

**CIVILIAN PERSONNEL**  
**Compensation**  
**Details**  
**Reimbursement**  
**Exemptions**

**B-211373.2 Con't**  
**June 30, 1988**

Legal restrictions on the State Department's use of nonreimbursable details from other agencies are established by specific agency statutes. In the absence of statutory authority for nonreimbursable details, our decision in 64 Comp. Gen. 370 applies, requiring reimbursement for all interagency details except 1) when the details to another agency involve matters that are similar or related to matters ordinarily handled by the loaning agency and the details will assist the loaning agency in accomplishing a purpose for which its appropriations are provided, or 2) where details are authorized for brief periods when necessary services cannot be obtained by other means and the number of persons and cost involved is minimal.

Details effected as part of the State-Defense Officer Exchange Program are properly nonreimbursable under the interagency agreement exception to reimbursement contained in 22 U.S.C. § 2685(a) as long as like numbers of employees actually are detailed between the State Department and Defense Department within a fiscal year.

## MILITARY PERSONNEL

### MILITARY PERSONNEL

B-227594 June 8, 1988

#### Travel

#### Overseas travel

#### Dependents

#### Travel expenses

#### Reimbursement

A member who was transferred to an overseas duty station did not have custody of his two minor children by a prior marriage at the time of transfer. Thereafter, he was granted custody by court order for a 1-year period and seeks reimbursement for their travel to his overseas station. Reimbursement is allowed. Under the provisions of paragraphs M7000-13, M7000-20 and M7016 of volume 1, Joint Travel Regulations, dependent children may be transported at government expense to a member's overseas location between PCS assignments, so long as the purpose is to change the dependents' residence. Since the member acquired custody of the minor children for an extended period, his decision to transport them to his overseas duty station was for the purpose of establishing their residence with him. See Colonel James Roche, USAF, B-198961, Mar. 18, 1981, aff'd on reconsideration, B-198961, Oct. 4, 1984.

A member stationed at an overseas location had court-ordered custody of his two minor children by a prior marriage. Because the children wanted to return to live with the member's former spouse, he sought their early return travel between school semesters at government expense. Under the provisions of paragraphs M7103-1 and M7103-2 of volume 1, Joint Travel Regulations, transportation of dependents from an overseas location to a designated location in the United States for compelling personal reasons is authorized at government expense if the travel is approved in advance. Since the member's request was approved in advance of travel based on the interests of the dependents, the minor dependents' travel to the member's former spouse's residence is authorized. Cf. Staff Sergeant Bobby L. James, B-200641, Apr. 21, 1981.

**Pay****Overpayments****Error detection****Debt collection****Waiver**

Upon being discharged from the Air Force in July 1982, a member was entitled to pay for 13 days of work and 1/2 day of accrued leave. Due to an administrative error, leave taken just prior to her discharge date was added to her separation payment, resulting in an overpayment of \$180.27. Waiver is granted since the member's salary payments fluctuated, since she did not receive an itemized statement of her separation pay, and since she had no special knowledge of payroll processes. Under the circumstances, she could not reasonably have been expected to be aware that the error occurred.

Pay  
Survivor benefits  
Annuities  
Eligibility  
Former spouses

Amendments made to the Survivor Benefit Plan in 1983 gave retired service members the option of voluntarily electing survivor annuity coverage for "a former spouse." A further amendment enacted in 1984 provides that if a retiree agrees in writing to elect annuity coverage for a former spouse and then "fails or refuses" to do so, the retiree nevertheless "shall be deemed to have made such an election." The determination of whether a written agreement may properly serve as the basis for a "deemed" election depends on the specific terms of the particular agreement submitted. In the case of a retired Army officer who agreed to continue annuity coverage for his wife "whether or not the parties . . . are married," an election to provide former spouse coverage may properly be deemed to have been made since those terms establish that the officer made a commitment to maintain annuity coverage for her following their divorce.

**PROCUREMENT**

**PROCUREMENT**

**B-206457.2 June 1, 1988**

**Socio-Economic Policies**

**Labor standards**

**Federal procurement regulations/laws**

**Amendments**

The General Accounting Office has no comment on proposed amendments to Federal Acquisition Regulation (FAR) Parts 1, 5, 22 and 52 prescribing policies and procedures implementing provisions of the Service Contract Act of 1965, as amended, the Fair Labor Standards Act of 1938, as amended, and related instructions of the Secretary of Labor.

**PROCUREMENT**

**B-229606.3 June 1, 1988**

**Bid Protests**

**88-1 CPD 511**

**GAO procedures**

**GAO decisions**

**Reconsideration**

Request for reconsideration of prior decision dismissing a protest against an agency's determination of non-responsibility because prospective contractor did not have a security clearance at the time of award as required by the solicitation is denied where no new facts or legal arguments are presented which warrant reversal or modification of the original decision.

**PROCUREMENT**                      **B-230312; B-230663**  
**Socio-Economic Policies**      **June 1, 1988**  
**Small business 8(a) subcontracting**  
**Options**  
**Federal procurement regulations/laws**  
**Revision**

In response to a proposed change to Parts 19 and 52 of the Federal Acquisition Regulation (FAR), the General Accounting Office has no objection to provisions specifying that small business subcontracting plans for contracts containing options must separately address both the basic and option quantities.

**PROCUREMENT**  
**Special Procurement Methods/Categories**  
**Options**  
**Federal procurement regulations/laws**  
**Revision**

In response to a proposed change to Parts 17, 37 and 52 of the Federal Acquisition Regulation (FAR), the General Accounting Office favors the provisions which would enable the government to require the continued performance of services within limits not to exceed 6 months and at the rates specified in the contract pending the resolution of circumstances beyond the control of the contracting agency which preclude the award of a basic contract for recurring services.

**PROCUREMENT**                      **B-230584 June 1, 1988**  
**Bid Protests**                      **88-1 CPD 512**  
**Premature allegation**  
**GAO review**

Contentions which merely anticipate agency action are premature and will not be considered.



**PROCUREMENT****B-230584 Con't****Competitive Negotiation June 1, 1988****Contract awards****Administrative discretion**

Protest that agency violated Federal Acquisition Regulation (FAR) §§ 15.402(c) and (d) (FAC 84-5) for failure to have a definite intent to award a contract for the correction of deficient turbine units is denied where the agency advised all offerors, prior to receipt of proposals, that it intended to award a contract, but that, if the incumbent contractor corrected its deficiencies, as no cost to the agency, the solicitation would be canceled. Protester could have elected not to participate in the procurement.

**PROCUREMENT****Competitive Negotiation****Requests for proposals****Amendments****Criteria**

Where letter containing questions and answers concerning the terms of the solicitation is furnished to all offerors in a writing signed by the contracting officer, this letter meets the essential requirements for a solicitation amendment and is binding on all parties.

**PROCUREMENT****Contract Management****Contract administration****Contractors****Deficiency****Correction**

Protester's objection to the agency's continued settlement negotiations with the incumbent contractor during the pendency of the current procurement for correction of deficiencies under the incumbent's prior contract, because of the possibility of technical transfusion or the use of auction techniques, is based on mere speculation and provides no basis with which to challenge the propriety of the agency's conduct of the procurement.

PROCUREMENT  
Contract Management  
Contract administration  
Contractors  
Deficiency  
Correction

B-230584 Con't  
June 1, 1988

PROCUREMENT  
Contract Management  
Contract administration  
GAO review

General Accounting Office will not review the agency's decision to continue negotiations for correction of deficiencies with incumbent contractor as it concerns a matter of contract administration that this Office does not review under its bid protest function, since administration of an existing contract is within the discretion of the contracting agency.

PROCUREMENT  
Bid Protests  
GAO procedures  
Preparation costs

B-231025.4 June 1, 1988  
88-1 CPD 513

Dismissal of protest as academic does not provide a basis upon which costs may be awarded since a prerequisite to the award of costs under the Competition in Contracting Act is a decision on the merits of the protest.

PROCUREMENT  
Bid Protests  
GAO procedures  
Protest timeliness  
10-day rule

B-231472 June 1, 1988  
88-1 CPD 514

Filing of a protest with the General Services Administration Board of Contract Appeals that is not within the Board's jurisdiction does not toll time for filing with the General Accounting Office.

**PROCUREMENT**

**Sealed Bidding  
Bids**

**B-229669.3 June 2, 1988**

**88-1 CPD 519**

**Responsiveness  
Pre-award samples  
Acceptability**

Even though solicitation's bid sample provision did not state the characteristics that the sample must meet, procuring agency may reject bid where it is clear from the sample that the bidder intended to qualify bid by taking exception to the specifications.

**PROCUREMENT**

**Sealed Bidding  
Contract awards  
Multiple/aggregate awards**

Protest that agency should make multiple awards representing the lowest overall cost to the government is denied where the only reasonable interpretation of invitation for bids is that it contemplated and authorized an aggregate award.

**PROCUREMENT**

**Sealed Bidding  
Invitations for bids  
Post-bid opening cancellation  
Justification  
Sufficiency**

**B-230142 June 2, 1988**

**88-1 CPD 521**

Cancellation of solicitation after bids have been opened and prices exposed is in the best interest of the government, and proper, where due to several of the lowest bidders' apparent misunderstanding regarding potential for multiple awards, leading them to request withdrawal of their bids, award to any of remaining competitors would not have allowed the government to obtain the requested services at the lowest possible price.

**PROCUREMENT****B-230159.2 June 2, 1988****Sealed Bidding****88-1 CPD 522****Invitations for bids****Post-bid opening cancellation****Justification****Sufficiency**

Compelling reason exists for canceling an invitation for bids, after bid opening where agency determines that needs of the government can be satisfied by a less expensive inspection method differing from that on which bids were invited.

**PROCUREMENT****B-230669.2 June 2, 1988****Competitive Negotiation****88-1 CPD 523****Technical evaluation boards****Bias allegation****Allegation substantiation****Evidence sufficiency**

Protest of evaluation of competitor's proposal is denied where the record shows that it was fair and reasonable and consistent with the solicitation's evaluation criteria. Protester's own reevaluation and rescoring of the proposal, which had been furnished to the firm, does not in itself invalidate the judgment of the contracting agency's evaluation panel.

**PROCUREMENT****Competitive Negotiation****Technical evaluation boards****Qualification****GAO review**

General Accounting Office will not object to the composition and qualifications of an agency's technical evaluation panel absent a showing of possible fraud, bad faith, conflict of interest or actual bias.

**PROCUREMENT**  
**Bid Protests**  
**Agency-level protests**  
**Protest timeliness**  
**GAO review**

**B-231123 June 2, 1988**  
**88-1 CPD 524**

Protest filed with the General Accounting Office subsequent to agency-level protest is dismissed as untimely where the original protest was untimely filed with agency.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Protest timeliness**  
**10-day rule**

**B-229843.2; B-229843.3**  
**June 2, 1988**  
**88-1 CPD 525**

Protest that agency unreasonably failed to downgrade awardee based on information in preaward survey is untimely where solicitation stated that preaward survey might be considered in evaluation and protester waited 6 weeks after contract award to pursue its basis of protest by filing a Freedom of Information Act request for preaward survey. In any event, the record shows that source selection official in considering the entire record including both the preaward survey and technical evaluation had a basis to conclude that evaluation of awardee was reasonable.

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for proposals**  
**Terms**  
**Computer equipment/services**  
**Certification**

Agency decision to discount potential problems in obtaining required agency certification of computer processor was not unreasonable in view of evidence that major processor component previously had passed certification.

PROCUREMENT                      B-229843.2; B-229843.3 Con't  
Competitive Negotiation        June 3, 1988  
Source selection boards  
Debriefing conferences  
Oral statements

Statements made at debriefing conference unsubstantiated by other evidence do not establish that source selection authority considered weaknesses in protester's proposal to be a more than trivial factor in source selection decision.

PROCUREMENT                      B-231070.2    June 3, 1988  
Bid Protests                    88-1    CPD    526  
GAO procedures  
Agency-level protests  
Protest timeliness  
Oral protests

PROCUREMENT  
Bid Protests  
GAO procedures  
Protest timeliness  
10-day rule

The General Accounting Office affirms a decision dismissing a protest as untimely filed where oral complaint to contracting officer did not constitute timely agency-level protest since oral protests are no longer permitted under the Federal Acquisition Regulation. Therefore, written protest to the agency which was not filed within 10 working days of when the basis for protest is known is also untimely.

**PROCUREMENT****B-231070.2 Con't****Bid Protests****June 3, 1988****GAO procedures****GAO decisions****Reconsideration****PROCUREMENT****Bid Protests****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Although on reconsideration, protester states that its objection to "generic nature" of solicitation's statement of work went to the "subjective evaluation" of its proposal, the General Accounting Office remains of the view that this protest ground concerns an alleged impropriety in the solicitation which was not timely filed and, therefore, that prior dismissal of protest was correct.

**PROCUREMENT****B-230255 June 6, 1988****Competitive Negotiation****Best/final offers****Evaluation errors****Technical evaluation boards****Omission**

Protest that agency acted improperly in failing to reconvene technical evaluation panel to review best and final offers is without merit; the fact that proposals are reevaluated by a person who was not a member of the original panel is not objectionable.

**PROCUREMENT****B-230272 June 6, 1988****Specifications****88-1 CPD 528****Minimum needs standards****Competitive restrictions****Justification****Sufficiency**

Procuring agency has shown a reasonable basis for restricting solicitation for respirator facepiece covers where restriction is based on National Institute for Occupational Safety and Health (NIOSH) regulations which establish safety standards for respirators in hazardous workplace conditions, and restriction is necessary to maintain NIOSH safety certification.

**PROCUREMENT****B-230598 June 6, 1988****Bid Protests****88-1 CPD 529****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest against solicitation specification is untimely when it is not filed with either the procuring agency or the General Accounting Office before the closing date for receipt of initial proposals. Alleged improprieties that are apparent on the face of a solicitation must be filed by that date.

**PROCUREMENT****Competitive Negotiation****Initial offers****Rejection****Propriety**

Protest that agency improperly rejected firm's initial proposal for failure to comply with material solicitation requirement for gear driven rotary auger snow plow is denied where protester fails to show that its offer complied with specification and where drawings submitted with protester's proposal reasonably show protester took exception to material requirement by offering a chain driven rotary auger.



**PROCUREMENT**

**B-230598 Con't**

**Competitive Negotiation**

**June 6, 1988**

**Offers**

**Evaluation**

**Technical acceptability**

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Technical acceptability**

**Negative determination**

**Propriety**

The determination of the acceptability of an offeror's technical proposal is primarily the responsibility of the procuring agency and will be questioned only upon a showing of unreasonableness or that the agency violated procurement statutes or regulations, neither of which has been shown here.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Price reasonableness**

**Determination**

**Administrative discretion**

Contracting officer's determination of price reasonableness will not be disturbed absent a showing of bad faith or fraud.

**PROCUREMENT**

**B-230722 June 6, 1988**

**Competitive Negotiation**

**88-1 CPD 530**

**Offers**

**Evaluation**

**Technical acceptability**

The General Accounting Office will not disturb an agency's decision that a technical proposal is unacceptable where the record shows that offeror, after discussions and review of its revised proposal, failed to sufficiently assure the performance and design of its offered equipment and services as required by solicitation.

PROCUREMENT                      B-230799    June 6, 1988  
Competitive Negotiation      88-1   CPD   531  
Offers  
    Competitive ranges  
    Exclusion  
    Discussion

After conducting one round of discussions with offeror, agency properly determined that offeror was no longer in the competitive range since its proposal was found technically unacceptable based on agency's evaluation which was supported by reasonable bases.

PROCUREMENT                      B-231116    June 6, 1988  
Contract Management  
Contract modification  
    Federal procurement regulations/laws  
    Amendments

In response to a request for comments on proposed changes to Federal Acquisition Regulation (FAR) Parts 43, 47 and 52, the General Accounting Office has no objection to an amendment which would, in essence, add a clause of general applicability limiting the authority to modify contracts to properly designated contracting officers and providing that the contractor assumes all risk for performing in accordance with any order not issued by authorized individuals.

PROCUREMENT                      B-231425    June 6, 1988  
Bid Protests                      88-1   CPD   532  
    GAO procedures  
    Protest timeliness  
    10-day rule

A protest to the General Accounting Office is untimely where filed more than 10 working days after the initial adverse action by the agency on a protest filed at that level. Subsequent attempts to pursue the matter at the agency level do not toll the 10-day period.

**PROCUREMENT**  
Special Procurement  
Methods/Categories  
Subcontracts  
Contract awards  
GAO review

**B-231508 June 6, 1988**  
**88-1 CPD 533**

The award of a second-tier subcontract will not be reviewed by the General Accounting Office where the award is not by or for the government.

**PROCUREMENT**  
Bid Protests  
GAO procedures  
GAO decisions  
Reconsideration

**B-228396.5 June 7, 1988**  
**88-1 CPD 534**

Request for reconsideration of previous decision is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates arguments made by the protester and considered previously by the General Accounting Office.

**PROCUREMENT**  
Bid Protests  
GAO procedures  
GAO decisions  
Reconsideration

**B-228453.4 June 7, 1988**  
**88-1 CPD 535**

Request for reconsideration is denied where protester fails to show any basis that would warrant reversal or modification of our prior decision.

**PROCUREMENT**  
Bid Protests  
GAO procedures  
Interested parties

**B-230170 June 7, 1988**  
**88-1 CPD 536**

The ninth low bidder is an interested party under our Bid Protest Regulations where remedy sought for allegedly ambiguous specification is not award, but resolicitation.

**PROCUREMENT**

**B-230170 Con't**

**Bid Protests**

**June 7, 1988**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

**PROCUREMENT**

**Specifications**

**Ambiguity allegation**

**Specification interpretation**

Protest against allegedly ambiguous specifications, filed after bid opening, is timely because protester did not become aware of agency interpretation of specifications until after bid opening.

**PROCUREMENT**

**Specifications**

**Ambiguity allegation**

**Specification interpretation**

Protest against allegedly ambiguous specification is sustained where agency is willing to accept bid based on fewer staff hours than protester offered under protester's reasonable interpretation of specification.

**PROCUREMENT**

**B-230212 June 7, 1988**

**Competitive Negotiation**

**88-1 CPD 537**

**Best/final offers**

**Evaluation**

**Point ratings**

**Propriety**

Evaluation of best and final offers (BAFOs) was proper where contracting officer examined BAFOs and reasonably concluded that they did not affect initial determination that proposals were technically equal; contracting officer was not required to have the proposals formally rescored by the technical evaluation panel after submission of BAFOs.

**PROCUREMENT**

**B-230212 Con't**

**Competitive Negotiation June 7, 1988**

**Contracting officer findings**

**Offers**

**Technical equality**

In determining that two proposals are technically equal, contracting officer satisfies obligation to consider views of technical evaluators by reviewing their scores and narratives relating to the proposals; contracting officer is not required to ascertain specifically whether evaluators agree with determination of technical equality.

Contracting officer's determination that competing proposals were technically equal was proper where contracting officer reasonably considered the protester's slight technical point scoring advantage to be the result of incumbency rather than technical superiority.

**PROCUREMENT**

**Competitive Negotiation**

**Discussion**

**Adequacy**

**Criteria**

Letter requesting best and final offers which communicated changed staffing requirements to the protester constituted meaningful discussion of the agency's concerns regarding the protester's staffing proposal because it led the protester into an area of its proposal which required amplification.

**PROCUREMENT**                      **B-230212 Con't**  
**Competitive Negotiation**      **June 7, 1988**  
**Offers**  
    **Cost realism**  
    **Evaluation**  
    **Administrative discretion**

Contracting agency's cost realism analysis based on conforming offerors' proposals to agency's staffing estimate was proper where the estimate was disclosed to offerors in letter requesting best and final offers and offerors were instructed to use it in developing their cost proposals.

**PROCUREMENT**  
**Competitive Negotiation**  
    **Requests for proposals**  
    **Amendments**  
    **Notification**  
    **Contractors**

Contracting agency may communicate changed requirements to offerors through a letter requesting best and final offers even though the letter is not in the form of a formal solicitation amendment.

**PROCUREMENT**                      **B-230226.2 June 7, 1988**  
**Contractor Qualification**      **88-1 CPD 538**  
    **Responsibility/responsiveness distinctions**  
    **Approved sources**  
    **Compliance time periods**

Solicitation provision requiring bidders to specify the name and location of their suppliers of cloth and textile components relates to responsibility, since this information is not necessary to determine whether the bidder has unequivocally offered to provide the requested supplies at a firm-fixed price.

**PROCUREMENT****B-230569.2 June 7, 1988****Sealed Bidding****88-1 CPD 539****Bid guarantees****Responsiveness****Letters of credit****Adequacy**

Where letter of credit submitted as bid guarantee contains conditional language which at best makes it unclear whether the letter is an irrevocable commitment, the letter is materially defective and the bid properly is rejected as nonresponsive.

**PROCUREMENT****B-230617; B-230617.2****Bid Protests****June 7, 1988****GAO procedures****88-1 CPD 540****Protest timeliness****10-day rule****Adverse agency actions**

Allegations challenging nonresponsibility determination by agency and refusal by Small Business Administration to issue a certificate of competency are untimely where not raised within 10 working days after protester should have known of allegedly improper actions.

**PROCUREMENT****Socio-Economic Policies****Small businesses****Responsibility****Competency certification****Negative determination**

Allegation challenging contracting agency's nonresponsibility determination and refusal by the Small Business Administration (SBA) to issue a certificate of competency are without merit, where there is no showing of fraud or bad faith on the part of the contracting officials or that the SBA failed to consider vital information bearing on the firm's responsibility.

**PROCUREMENT**                      **B-230617; B-230617.2 Con't**  
**Socio-Economic Policies**      **June 7, 1988**  
**Small businesses**  
**Responsibility**  
**Negative determination**  
**Effects**

Agency's nonresponsibility determination does not amount to de facto debarment; a finding of nonresponsibility, unlike a debarment, does not prevent a firm from competing for other government contracts and receiving awards if the firm is otherwise qualified and convinces the agency that it has corrected its past problems.

**PROCUREMENT**                      **B-231361.2 June 7, 1988**  
**Bid Protests**                      **88-1 CPD 541**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protest challenging specific solicitation requirements is untimely where basis for protest was evident from face of solicitation and protest was not filed prior to the closing date for receipt of initial proposals.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Protest timeliness**  
**Significant issue exemptions**  
**Applicability**

An untimely protest will not be considered under the significant issue exception to the bid protest timeliness requirements where the issue raised is not of widespread interest to the procurement community.



**PROCUREMENT**  
**Sealed Bidding**  
**Bid guarantees**  
**Responsiveness**  
**Letters of credit**  
**Adequacy**

**B-230566 June 8, 1988**  
**88-1 CPD 544**

Where letter of credit submitted as a bid guarantee contains language of a condition which renders the letter, at best, ambiguous, as a consequence of which the enforceability of the instrument is uncertain, the accompanying bid is properly rejected as nonresponsive since the bid guarantee, a material part of the bid, does not provide a firm commitment as required by the solicitation.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Protest timeliness**  
**Significant issue exemptions**  
**Applicability**

**B-231420.2 June 8, 1988**  
**88-1 CPD 545**

General Accounting Office (GAO) will not consider the merits of an untimely protest by invoking the significant issue exception in GAO's Bid Protest Regulations where the protest does not raise an issue of first impression that would be of widespread interest to the procurement community.

**PROCUREMENT****B-231361.2 Con't****Bid Protests****June 7, 1988****GAO procedures****Protest timeliness****10-day rule****Adverse agency actions**

Protest filed more than 10 working days after protester learned of the denial of its agency-level protest is untimely and is not for consideration.

**PROCUREMENT****B-231534 June 7, 1988****Sealed Bidding****88-1 CPD 542****Bids****Responsiveness****Bid guarantees****Omission**

The failure to furnish a bid guarantee required in the invitation renders the bid nonresponsive.

**PROCUREMENT****B-230107.2 June 8, 1988****Bid Protests****88-1 CPD 543****Premature allegation****GAO review**

Resolution of low offerer's protest against possible award to offeror not in line for award is dismissed because decision would serve no useful purpose.

**PROCUREMENT****B-231420.2 Con't****Bid Protests****June 8, 1988****GAO procedures****Protest timeliness****10-day rule****Adverse agency actions**

Protest objecting to contracting agency's decision to exclude protester's proposal from competitive range is untimely when filed more than 10 days after the protester received notice from the agency which advised of the specific deficiencies which caused the proposal to be eliminated from competition, and the protester's disagreement with its elimination because of these stated deficiencies constitutes its basis for protest.

**PROCUREMENT****B-227843.6 June 9, 1988****Competitive Negotiation****88-1 CPD 546****Offers****Pre-award periods****Value engineering****Change orders**

Addition of evaluation factor to offered price for item manufactured in accordance with value engineering change proposal (VECP) is proper where solicitation provided for addition of factor to offer of VECP item; fact that proposal stated it was for standard item, not VECP item, does not preclude addition of factor where it is clear from offer as a whole that offered item will be manufactured in accordance with VECP.

Agency's alleged prior acceptance of value engineering change proposal (VECP) item under contract for standard item does not eliminate distinction between the two items and thereby preclude addition of evaluation factor to offer of VECP item on future procurement; proper remedy for agency's improper acceptance of VECP items (there is no evidence of such in this case) is to stop the practice.

PROCUREMENT B-229583.2 June 9, 1988

Socio-Economic Policies 88-1 CPD 547

Small business 8(a) subcontracting

Administrative regulations

Compliance

GAO review

PROCUREMENT

Socio-Economic Policies

Small business 8(a) subcontracting

Contract awards

Administrative discretion

General Accounting Office will not review the application by the Small Business Administration of its internal procedures governing when an impact determination is required prior to the award of a contract under section 8(a) of the Small Business Act in the absence of a showing of possible fraud or bad faith.

PROCUREMENT

Socio-Economic Policies

Small business 8(a) subcontracting

Use

Administrative discretion

Regulations of the Small Business Administration (SBA) stating that the SBA will not accept a proposed procurement into the section 8(a) program of the Small Business Act if the SBA determines that there would be an adverse impact on an individual small business do not necessarily require the SBA to perform a formal impact study whenever it desires to include a proposed procurement in the 8(a) program.

**PROCUREMENT**

**B-230627 June 9, 1988**

**Bid Protests**

**88-1 CPD 549**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest that technical specifications were unduly restrictive of competition is untimely where this alleged impropriety is apparent but not filed prior to the closing date for receipt of quotes.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**Significant issue exemptions**

**Applicability**

An untimely protest alleging unduly restrictive specifications will not be considered under the significant issue exception to the bid protest timeliness rules because the issue raised is not of widespread interest to the procurement community.

**PROCUREMENT**

**Competitive Negotiation**

**Quotations**

**Evaluation**

**Technical acceptability**

Agency properly found protester's quote to be technically unacceptable under Federal Supply Schedule requote procedures where protester admitted deviating from technical specifications and agency's technical assessment had a reasonable basis.

**PROCUREMENT**

**B-230586 June 9, 1988**

**Bid Protests**

**88-1 CPD 548**

**Bias allegation**

**Allegation substantiation**

**Burden of proof**

A protester has the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest alleging improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals is untimely if not filed prior to closing.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Competitive ranges**

**Exclusion**

**Administrative discretion**

A procuring agency's decision to exclude an offeror from the competitive range is proper where the offeror's technical proposal contains significant deficiencies which would require major revision to be considered technically acceptable.

**PROCUREMENT****B-230721 June 9, 1988****Bid Protests****88-1 CPD 550****GAO Procedures****Interested parties****Direct interest standards**

Protester is not an interested party to protest that its offer in response to a solicitation for a shear was improperly rejected as technically unacceptable where a competitor offered the same shear at a lower cost and the award was based on cost, since the other firm, not the protester, would be in line for the award if the shear were found acceptable.

**PROCUREMENT****B-230883; B-230884****Payment/Discharge****June 9, 1988****Federal procurement regulations/laws****Amendments****Progress payments****First-article testing**

The General Accounting Office supports a proposed amendment to Federal Acquisition Regulation (FAR) § 32.501 to provide for the inclusion of a contract provision limiting progress payments on first article work by a stated amount or percentage.

**PROCUREMENT****B-231158 June 9, 1988****Socio-Economic Policies****Federal procurement regulations/laws****Amendments****Tax credits**

In response to a request for comments on proposed changes to the Federal Acquisition Regulation §§ 52.229-8 and 52.229-9, the General Accounting Office has no objection to the addition of two clauses for foreign military sales contracts which would require contractors and subcontractors to credit back to the United States government the amount of any reduction in United States tax liability received as the result of credits given for taxes paid to foreign countries in the performance of the contracts. This will preclude double recoveries since contractors are entitled to foreign tax credits for such amounts and may also claim them as allowable costs to be reimbursed under the contracts.

**PROCUREMENT****B-231354.2 June 9, 1988****Bid Protests****88-1 CPD 551****GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration of prior decision is denied where the protester disagrees with decision but presents no new arguments or information that would establish that the decision contained an error of fact or law which would warrant reversal.



**PROCUREMENT****B-231473 June 9, 1988****Bid Protests****88-1 CPD 552****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest alleging solicitation deficiency that is apparent prior to the closing date for the receipt of initial proposals is untimely when included in the protester's initial proposal since the contracting agency is under no obligation to open or evaluate proposals until after the closing date, the time by which protests of this type must be filed.

**PROCUREMENT****B-229349 June 10, 1988****Payment/Discharge****Shipment costs****Overcharge****Payment deductions****Propriety**

A carrier's request for review of transportation audit actions taken by the General Services Administration (GSA) under 31 U.S.C. § 3726(d)(1) (1982) will not be considered by the Comptroller General to the extent transactions forming the basis of the request are not identified; and where a carrier fails to establish the existence of alleged informal agreements that it states formed the basis of its freight charges, overcharge deductions made by GSA based on lower tender charges are sustained.

**PROCUREMENT****B-229917.4, et al.****Competitive Negotiation****June 10, 1988****Requests for proposals****88-1 CPD 553****Best/final offers****Information adequacy**

Protester's contention that letter requesting best and final offers (BAFOs) improperly restricted scope of revisions it could make to its proposal is without merit since, unless expressly instructed otherwise, offerors are on notice that changes to their technical proposals are permitted in BAFOs.

**PROCUREMENT**

**B-229917.4, et al. Con't**

**Competitive Negotiation  
Requests for proposals  
Cancellation  
Resolicitation  
Information disclosure**

**June 10, 1988**

Where contracting agency properly decides to open negotiations and, if appropriate, terminate award improperly made on the basis of initial proposals, contracting agency is not required to release to each offeror information regarding agency's evaluation of initial proposals even though one offeror in fact received such information, since the information was released after initial award was made but before the decision to open negotiations, in accordance with the Federal Acquisition Regulation regarding debriefings and the Freedom of Information Act.

**PROCUREMENT**

**Competitive Negotiation  
Requests for proposals  
Evaluation criteria  
Subcriteria  
Disclosure**

Protester's contention that contracting agency should more clearly define evaluation subfactors is without merit since agency need not specifically identify subfactors so long as they are reasonably related to evaluation factors set out in solicitation.

**PROCUREMENT**  
Special Procurement  
Methods/Categories  
Service contracts  
Contract performance  
Profits  
GAO review

**B-229917.4, et al. Con't**  
**June 10, 1988**

Protester's contention that another offeror should be deprived of profits it received for interim performance of services at issue in protest does not involve an issue subject to review by General Accounting Office under the Competition in Contracting Act; further allegation that profits improperly subsidized offeror's current best and final offer (BAFO) provides no basis to require that contracting agency exclude BAFO from consideration for award.

**PROCUREMENT**  
Competitive Negotiation  
Requests for proposals  
Evaluation criteria  
Quality control  
Testing

**B-230773 June 10, 1988**  
**88-1 CPD 555**

**PROCUREMENT**  
Specifications  
Minimum needs standards  
Competitive restrictions  
GAO review

Allegation that quality assurance testing provision in request for proposals is improper because it is allegedly being used to eliminate unwanted contractors, and to ensure award to a predetermined contractor, is denied where the identical allegation raised by the same protester against the same procuring activity was recently considered and rejected by our Office as unsubstantiated and the protester has not offered any additional evidence.

**PROCUREMENT**                      **B-230773 Con't**  
    **Specifications**              **June 10, 1988**  
        **Minimum needs standards**  
        **Competitive restrictions**  
        **Design specifications**  
        **Justification**

There is no basis for the protester's unsupported allegation that a specification requiring forceps to have box locks "without crevices or sharp edges" is overly restrictive where the agency has previously procured the item without difficulty in this regard from six different contractors.

**PROCUREMENT**                      **B-230867.2 June 10, 1988**  
    **Bid Protests**                **88-1 CPD 556**  
        **GAO procedures**  
        **Protest timeliness**  
            **10-day rule**  
            **Adverse agency actions**

General Accounting Office will not consider a protest filed more than 10 working days after the protester received oral notification of an adverse response to its agency-level protest.

**PROCUREMENT**                      **B-231196 June 10, 1988**  
    **Bid Protests**                **88-1 CPD 557**  
        **GAO procedures**  
        **Protest timeliness**  
            **10-day rule**

Protest is untimely where filed more than 10 days after protester knew of the basis for the protest. Agency's alleged refusal to meet with the protester does not excuse the protester from complying with filing requirements.

**PROCUREMENT** **B-231196 Con't**  
**Socio-Economic Policies** **June 10, 1988**  
**Small businesses**  
**Size standards**  
**Administrative discretion**

The General Accounting Office will not consider an allegation that a solicitation has an improper Standard Industrial Classification used to determine the small business size standard for the procurement, since conclusive authority to determine the proper classification is vested in the Small Business Administration.

**PROCUREMENT** **B-231358.2 June 10, 1988**  
**Bid Protests** **88-1 CPD 558**  
**GAO procedures**  
**Protest timeliness**  
**10-day rule**

Prior dismissal of protest as untimely is affirmed where protest was filed in our Office more than 10 working days after the protester became aware of the basis of its protest because the protest was misaddressed based on information provided by the procuring agency.

**PROCUREMENT** **B-231397 June 10, 1988**  
**Bid Protests** **88-1 CPD 559**  
**GAO procedures**  
**Interested parties**  
**Direct interest standards**

Protest allegations challenging proposed award are dismissed where protester would not be in line for award if allegations were resolved in its favor, and protester therefore is not an interested party.

**PROCUREMENT**

**B-231397 Con't**

**Bid Protests**

**June 10, 1988**

**GAO procedures**

**Protest timeliness**

**10-day rule**

**Adverse agency actions**

Protest against exclusion of proposal from competitive range is dismissed as untimely where filed more than 10 working days after notification of exclusion and the reasons therefor.

**PROCUREMENT**

**B-230223 June 13, 1988**

**Competitive Negotiation**

**88-1 CPD 560**

**Quotations**

**Alternate offers**

**Rejection**

**Propriety**

An agency's rejection of protester's quotation offering alternate product for critical jet aircraft part is not unreasonable given the extended 230-day period needed by another cognizant agency to qualify the part, the un rebutted stated urgency of the item, and the protester's failure to submit technical drawings on its alternate part until the protest was filed.

PROCUREMENT B-230646.2 June 13, 1988  
Bid Protests 88-1 CPD 561  
Administrative policies  
Violation  
GAO review

PROCUREMENT  
Special Procurement Methods/Categories  
In-house performance  
Cost evaluation  
Administrative policies  
GAO review

Protest that solicitation requirement for a cost realism evaluation of proposals solicited for cost comparison purposes deviates from Office of Management and Budget Circular A-76 cost comparison procedures is dismissed since it involves alleged deviation from executive branch policy which is not for consideration under General Accounting Office bid protest function.

PROCUREMENT B-230754 June 13, 1988  
Noncompetitive Negotiation 88-1 CPD 562  
Contract extension  
Sole sources  
Propriety

PROCUREMENT  
Special Procurement Methods/Categories  
Options  
Contract extension  
Use  
Propriety

Protest against the award of an interim contract for 6 months with a 6-month option period based on unusual and compelling urgency is denied with respect to the base period but General Accounting Office recommends that option not be exercised since after a total of 18 months of extensions the urgency determination does not support the option period.

**PROCUREMENT****B-230774 June 13, 1988****Bid Protests****88-1 CPD 563****GAO procedures****Protest timeliness****10-day rule**

Where protester's allegations involving the General Services Administration Fire Safety Regulations and the fire safety deficiencies in the protester's building were previously considered in a recent decision, protester should have known its basis of protest after being informed of the same fire safety deficiencies during discussions with the agency in this procurement. Therefore, protest filed more than 10 working days after discussions and call for best and final offers is untimely.

**PROCUREMENT****B-231080.2 June 13, 1988****Bid Protests****Allegation****Withdrawal****Notification****Lacking**

Protester's request that General Accounting Office (GAO) cancel a decision is denied because GAO did not receive a withdrawal letter from the protester prior to issuance of the decision even though protester claims to have sent one.

**PROCUREMENT****B-231515 June 13, 1988****Socio-Economic Policies****88-1 CPD 564****Small businesses****Disadvantaged business set-asides****Eligibility****Determination**

The Small Business Administration has the statutory authority to determine whether a firm is small and disadvantaged for purposes of eligibility for federal procurement preferences.



**PROCUREMENT** **B-231515 Con't**  
**Socio-Economic Policies** **June 13, 1988**  
**Small businesses**  
**Responsibility**  
**Affirmative determination**  
**GAO review**

General Accounting Office does not review a protest of an agency's affirmative determination of responsibility absent a showing of possible fraud, bad faith, or failure to apply definitive criteria contained in the solicitation.

**PROCUREMENT** **B-231614 June 13, 1988**  
**Bid Protests** **88-1 CPD 565**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Contention that contracting agency allowed insufficient time for submission of proposals after issuance of an amendment is untimely where it is not raised before the closing date for receipt of proposals.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Late submission**  
**Acceptance criteria**

Proposal delivered by Federal Express after the closing date for receipt of proposals properly was rejected where late delivery was caused by Federal Express and not the government.

**PROCUREMENT****B-228468.2 June 14, 1988****Bid Protests****88-1 CPD 566****GAO procedures****Preparation costs****PROCUREMENT****Competitive Negotiation****Offers****Preparation costs**

Where agency unreasonably induced the protester to submit proposal based on overstated minimum needs and where agency improperly awarded the contract on the basis of initial offers to other than the low offeror, the protester is entitled to its costs of filing and pursuing the protest, including attorneys' fees, and proposal preparation costs.

**PROCUREMENT****B-229642.2 June 14, 1988****Bid Protests****88-1 CPD 567****Non-prejudicial allegation****GAO review**

A protester, who believed a protest issue had been decided to the protester's benefit at an informal General Accounting Office (GAO) conference on a protest, which caused it not to submit comments on the issue after the conference, was not prejudiced, where: (1) the conference was understood to be informal only; (2) the GAO attorney only requested the agency's opinion on a pure legal question and did not direct the protester to refrain from submitting comments on issue; and (3) the protester's arguments on the particular issue have now been fully considered and rejected incident to its reconsideration request.

**PROCUREMENT** B-229642.2 Con't  
Contractor Qualification June 14, 1988  
Licenses  
Determination time periods

The General Accounting Office will not question a contracting officer's good faith determination that the successful offeror meets solicitation requirements mandating that two of the contractor's employees have Coast Guard pilot licenses, since licenses were not required as condition to award, but rather were contract performance requirements and thus were not definitive responsibility standards.

**PROCUREMENT** B-230224 June 14, 1988  
Specifications 88-1 CPD 568  
Minimum needs standards  
Competitive restrictions  
Allegation substantiation  
Evidence sufficiency

**PROCUREMENT**  
Specifications  
Minimum needs standards  
Competitive restrictions  
Justification  
Sufficiency

Protester, who has failed to show allegedly restrictive specifications are unreasonable, has not met its burden of showing the specifications are unduly restrictive, where the contracting agency has made a prima facie showing of reasonableness of the specifications.

**PROCUREMENT**

B-230260 June 14, 1988

**Bid Protests**

88-1 CPD 569

**GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest against bid sample requirement and allegedly subjective inspection provision in solicitation is untimely, and will not be considered, where raised after bid opening.

**PROCUREMENT****Specifications****Minimum needs standards****Determination****Administrative discretion**

A protest contending that a solicitation's inspection and testing provision is an unreasonable method of determining compliance with specifications is denied where the provision reasonably reflects the contracting agency's actual needs; a contracting agency's responsibility for determining its actual needs includes determining the type and amount of testing necessary to ensure product compliance with specifications and the General Accounting Office will not question such a determination absent a clear showing that it was arbitrary or capricious.

**PROCUREMENT**

B-230268 June 14, 1988

**Competitive Negotiation**

88-1 CPD 570

**Contract awards****Award procedures****Procedural defects****PROCUREMENT****Competitive Negotiation****Contract awards****Propriety**

Protest is sustained where contracting agency awarded a contract for an item that did not meet the requirements stated in the solicitation.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**

**B-230559 June 14, 1988**  
**88-1 CPD 571**

**Clerical errors**  
**Error correction**  
**Propriety**

Where workpapers contain clear and convincing evidence that the low bidder mistakenly calculated its profit margin, and the intended bid may be ascertained by taking into account the error and its mathematically calculable effects on bond and insurance premium costs, the bid may be corrected upward to reflect the revised profit calculation since the corrected bid would remain low by a substantial amount.

**PROCUREMENT**

**B-231544 June 14, 1988**  
**88-1 CPD 572**

**Bid Protests**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protest that solicitation should have included an evaluation preference for small disadvantaged business concerns is untimely, since it alleges a solicitation impropriety apparent before bid opening but was not filed before that time.

**PROCUREMENT**

**Bid Protests**  
**Non-prejudicial allegation**  
**GAO review**

Protest by fifth low bidder, filed after bid opening, that award to low bidder is contrary to agency policy of granting an evaluation preference to small disadvantaged business concerns is dismissed where solicitation did not provide for such preference.

**PROCUREMENT****B-231600 June 14, 1988****Bid Protests****88-1 CPD 573****GAO procedures****Protest timeliness****10-day rule**

Protest of other than an apparent solicitation impropriety is untimely where filed more than 10 working days after the basis for protest was known. Moreover, filing of a protest with the General Services Administration Board of Contract Appeals that is not within the Board's jurisdiction does not toll the time for filing with the General Accounting Office.

**PROCUREMENT****B-230101.2 June 16, 1988****Bid Protests****88-1 CPD 574****GAO procedures****Protest timeliness****10-day rule****Adverse agency actions**

Protest alleging a solicitation defect was correctly dismissed by the General Accounting Office (GAO), where the protest was filed in the GAO more than 10 working days after the initial adverse contracting agency action (receipt of initial proposals in spite of the protest without amending the solicitation to change the allegedly defective requirement) on the firm's agency-level protest.

Protest alleging that the agency improperly requested unlimited rights to engineering data for a commercial item developed exclusively at private expense is timely, where the protest was filed within 10 working days after the protester was notified by the agency that only unlimited data rights would be considered acceptable.

**PROCUREMENT** **B-230101.2 Con't**  
**Competitive Negotiation** **June 16, 1988**  
**Requests for proposals**  
**Terms**  
**Technical information**  
**Design specifications**

The Air Force properly solicited engineering drawings and data for all components of an air compressor unit rather than for the end item alone, where: (1) there is nothing in the statute governing acquisition rights in technical data to prohibit a request for drawings/data on individual components; (2) the implementing regulations issued by the Secretary of Defense specifically authorize acquisition of unlimited rights to form, fit, and function data on individual components of the end item; (3) the Air Force reports that the data may be necessary for maintaining and operating the compressors in the future; and (4) the solicitation specifically recognizes the offerors' rights to protect their proprietary technical data for commercial items developed at private expense.

**PROCUREMENT** **B-230585 June 16, 1988**  
**Bid Protests** **88-1 CPD 576**  
**Federal procurement regulations/laws**  
**Applicability**  
**GAO authority**

Although the Administrative Office of the United States Courts, as an arm of the judicial branch, is not subject to the Federal Property and Administrative Services Act of 1949, as amended, or the Federal Acquisition Regulation, and its procurements for court reporting services are not subject to any procurement statute, General Accounting Office will consider protests of such procurements to determine whether the actions taken by the Administrative Office are reasonable.

**PROCUREMENT**                      **B-230585 Con't**  
**Competitive Negotiation**      **June 16, 1988**  
**Contract awards**  
**Administrative discretion**  
**Cost/technical tradeoffs**  
**Technical superiority**

Decision to award to offeror with more favorable recent performance record but slightly higher price was reasonable where request for proposals provided for evaluation of offers on the basis of price as well as other factors including experience.

**PROCUREMENT**                      **B-230934.3 June 16, 1988**  
**Bid Protests**                      **88-1 CPD 577**  
**GAO procedures**  
**Interested parties**

Low bidder found to be nonresponsive is not an interested party entitled to file a protest when the protest is directed against the second and third low bidders but not the fourth low bidder since even if the protest were sustained a party other than the protester would be in line for award.

**PROCUREMENT**                      **B-231384.2 June 16, 1988**  
**Bid Protests**                      **88-1 CPD 578**  
**GAO procedures**  
**Protest timeliness**  
**10-day rule**

Protest filed some 6 weeks after contract was awarded is properly viewed as untimely under Bid Protest Regulations in absence of an explanation from the protester as to why the protest is timely.



PROCUREMENT B-231384.2 Con't  
Contract Management June 16, 1988  
Contract administration  
Contract terms  
Compliance  
GAO review

Whether a product as delivered complies with contract requirements is a matter of contract administration, which is the responsibility of the procuring agency, not the General Accounting Office.

PROCUREMENT  
Contractor Qualification  
Responsibility  
Contracting officer findings  
Affirmative determination  
GAO review

Where an offeror promises to comply with the requirements of a solicitation, a contention that the offeror will be unable to do so at the offered price constitutes an allegation that the offeror is not responsible; the General Accounting Office generally does not review affirmative determinations of responsibility.

PROCUREMENT B-231401.2; B-231401.3  
Bid Protests June 16, 1988  
GAO procedures 88-1 CPD 579  
GAO decisions  
Reconsideration

Request for reconsideration of dismissal is denied where protester shows no errors in General Accounting Office's conclusion that original protest that stated no protest grounds were properly dismissed.

**PROCUREMENT**

**B-231401.2; B-231401.3 Con't**

**Bid Protests**

**June 16, 1988**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest that solicitation was unduly restrictive and should have been set aside for small business concerns is untimely where the protest was filed after bid opening.

**PROCUREMENT**

**Sealed Bidding**

**Below-cost bids**

**Contract awards**

**Propriety**

Allegation that procurement estimate is faulty because of receipt of considerably lower bid does not provide a valid basis for protest since such a bid, which may represent a buy-in, does not itself establish the invalidity of the estimate.

**PROCUREMENT**

**B-230567.2 June 17, 1988**

**Bid Protests**

**88-1 CPD 580**

**GAO procedures**

**GAO decisions**

**Reconsideration**

Request for reconsideration is denied where protester fails to show any basis that would warrant reversal or modification of the prior decision.

**PROCUREMENT**

B-230793 June 17, 1988

Competitive Negotiation

88-1 CPD 581

Contract awards

Administrative discretion

Technical equality

Cost savings

Contention that contracting agency's evaluation of technical proposals was inconsistent with the evaluation scheme in request for proposals (RFP) is without merit where, based on evaluation panel's conclusion that all the proposals were technically acceptable, contracting officer concluded that the proposals were technically equal and, as contemplated by the RFP, made award based on lowest price.

Contention that contracting officer improperly engaged in auction techniques by referring to current contract price in oral request for best and final offers is denied since the making of such statement is not itself an improper auction technique and there is no indication that the contracting officer's statement had any effect on offeror's pricing.

**PROCUREMENT**

B-228368.3 June 20, 1988

Bid Protests

88-1 CPD 582

GAO procedures

GAO decisions

Reconsideration

Prior decision is affirmed where protester fails to show any basis that would warrant reversal or modification of our prior decision dismissing as academic protest against solicitation terms on grounds that firm would not be eligible for award even if protest was sustained. The record shows that the protester was not the low offeror after the third round of best and final offers (BAFOs), that the protested terms had no material impact on price, and that the agency had a valid reason to request a third round of BAFOs.

**PROCUREMENT**

**B-230261 June 20, 1988**

**Bid Protests**

**88-1 CPD 583**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protester's allegation that reasonable evaluation of proposals is impossible since solicitation, contemplating award of a cost-reimbursement level of effort contract, contains no specific tasks or deliverables is dismissed as untimely since it concerns an alleged impropriety that was apparent on the face of the solicitation and was raised after closing date for receipt of proposals.

**PROCUREMENT**

**Competitive Negotiation**

**Contract awards**

**Administrative discretion**

**Technical equality**

**Cost savings**

Where the two highest-rated technical proposals are found to be essentially equal, contracting agency properly made award to the one of those two offerors who proposed the lowest evaluated cost.

**PROCUREMENT**

**Competitive Negotiation**

**Contract awards**

**Initial-offer awards**

**Propriety**

Contracting agency properly made award of cost-reimbursement contract based on initial proposals without discussions where record supports reasonableness of awardee's lowest evaluated costs and solicitation advised offerors that award might be made without discussions.

**PROCUREMENT**

B-230261 Con't

**Competitive Negotiation**

June 20, 1988

**Offers****Cost realism****Evaluation****Administrative discretion**

Contracting agency's cost realism analysis involves the exercise of informed judgment, and the General Accounting Office will not question such an analysis unless it clearly lacks a reasonable basis. Reasonable basis is provided by determination that awardee's technical approach is feasible and essentially equal to that of the highest-rated offeror, by Defense Contract Audit Agency analysis of awardee's rates, and by comparison of awardee's rates with those of the incumbent.

**PROCUREMENT****Competitive Negotiation****Offers****Evaluation****Personnel****Adequacy**

Agency's evaluation of technical proposals, under a solicitation for a cost-reimbursement level of effort contract, is reasonable where agency uses an evaluation worksheet, containing a series of questions relating to the criteria set forth in the solicitation, to score each proposal's labor mix on effectiveness of meeting the general tasks described in the solicitation's schedule of work.

PROCUREMENT	B-230265	June 20, 1988
Competitive Negotiation	88-1	CPD 584
Requests for proposals		
Amendments		
Issuance		
Lacking		

PROCUREMENT	B-230601	June 20, 1988
Bid Protests	88-1	CPD 585
Moot allegation		
GAO review		

PROCUREMENT B-230713 June 20, 1988  
Sealed Bidding 88-1 CPD 586  
Bids  
Errors  
Error substantiation

D-48

**PROCUREMENT****B-230912 June 20, 1988****Socio-Economic Policies****88-1 CPD 587****Small businesses****Responsibility****Negative determination****GAO review**

Protest that a negotiated contract was improperly awarded at a higher price than that offered by protester is dismissed since contracting agency determined protester to be nonresponsive, and that matter is not challenged in the subject protest.

**PROCUREMENT****B-230934.2 June 20, 1988****Bid Protests****88-1 CPD 588****GAO procedures****Administrative reports****Comments timeliness**

Dismissal of original protest for failure to file comments on agency report in timely manner is affirmed, even though protester received report after date it was due, where, despite notice of its responsibility, protester allowed lapse of more than 10 working days after report was due before notifying the General Accounting Office of late receipt.

**PROCUREMENT****B-230979 June 20, 1988****Sealed Bidding****88-1 CPD 589****Bid guarantees****Responsiveness****Letters of credit****Adequacy**

Where letter of credit submitted as a bid guarantee contains a condition which renders the letter, at best, ambiguous, as a result of which the enforceability of the instrument is uncertain, the accompanying bid is properly rejected as nonresponsive since the bid guarantee does not provide a firm commitment as required by the solicitation.

**PROCUREMENT**                      **B-230246; B-230246.2**  
    **Competitive Negotiation**      **June 21, 1988**  
        **Contract awards**          **88-1 CPD 590**  
            **Initial-offer awards**  
                **Propriety**

Contracting agency improperly made award on the basis of initial proposals to other than the offeror proposing the lowest overall cost where offerors in the competitive range were not permitted to revise initial technical proposals but only to price amendment for increased quantity, and in effect, merely to resubmit new initial proposals, and where no request for best and final offers was made before award.

**PROCUREMENT**                      **B-230582 June 21, 1988**  
    **Competitive Negotiation**      **88-1 CPD 591**  
        **Requests for quotations**  
            **Cancellation**  
                **Justification**  
                    **Minimum needs standards**

Contracting agency's cancellation of solicitation for reforestation was proper where the solicitation's provisions did not clearly set forth agency's needs and the record discloses no bad faith or fraud on part of the contracting agency in making its determination.

**PROCUREMENT**                      **B-230615.2 June 21, 1988**  
    **Bid Protests**                  **88-1 CPD 592**  
        **Allegation**  
            **Abandonment**

Where agency specifically rebuts the issue raised in the initial protest and the protester fails to address the agency's rebuttal in its comments on the agency's report, the issue is deemed abandoned.



**PROCUREMENT****B-230645 June 21, 1988****Specifications****88-1 CPD 593****Minimum needs standards****Competitive restrictions****Design specifications****Justification**

Protest that solicitation for fiberglass equipment shelters unduly restricted competition by specifying particular construction design is denied where record supports the procuring agency's determination that this design is required to meet its needs.

Protest that solicitation requirements were "written around" design features of a competitor's product is denied where agency establishes that solicitation requirements are possible sources for an item does not determine the restrictiveness of the requirements.

**PROCUREMENT****B-231414 June 21, 1988****Special Procurement****88-1 CPD 594****Methods/Categories****Subcontracts****Contract awards****GAO review**

Protest of a subcontract awarded by a government prime contractor is dismissed where the subcontract was not "by or for" the government.

**PROCUREMENT****B-227847.2 June 22, 1988****Bid Protests****88-1 CPD 595****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

A protest based on solicitation defect filed after the closing date for receipt of initial proposals is untimely.

**PROCUREMENT****B-227847.2 Con't****Competitive Negotiation****June 22, 1988****Discussion****Adequacy****Criteria**

A protest that an agency did not conduct oral discussions is without merit because the requirement that discussions be held permits either written or oral discussions.

**PROCUREMENT****Competitive Negotiation****Pre-award surveys****Purposes**

Agency was not required to conduct a preaward survey on an offeror not in line for award since such a survey is used to establish the responsibility of a prospective awardee, but is not generally used in the technical evaluation of proposals.

**PROCUREMENT****B-228591.2 June 22, 1988****Bid Protests****88-1 CPD 596****GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration is denied where protester fails to show error of law or fact in original decision holding that sole-source award to only firm qualified to manufacture a particular aircraft part under a new specification was justified in view of the expected cost savings and safety concerns about the part currently in use.

**PROCUREMENT****B-229917.8 June 22, 1988****Bid Protests****88-1 CPD 597****GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration is denied where protester fails to show any error of law or fact in prior decision holding that, where contracting agency properly decides to open negotiations and, if appropriate, terminate award improperly made on the basis of initial proposals, agency is not required to release to each offeror information regarding evaluation of initial proposals even though one offeror in fact received such information, since the information was released after initial award was made but before the decision to open negotiations, in accordance with the Federal Acquisition Regulation and the Freedom of Information Act.

**PROCUREMENT****B-230266.2 June 22, 1988****Bid Protests****88-1 CPD 598****GAO procedures****Interested parties**

General Accounting Office will not consider a protest filed by a debarred contractor because it is not an interested party since it is ineligible to receive an award even if the protest were sustained.

**PROCUREMENT****B-230822 June 22, 1988****Sealed Bidding****88-1 CPD 599****Bids****Responsiveness****Price omission****Line items**

Bid that acknowledges the amendments to a solicitation, but fails to include a price for an item added by an amendment, is nonresponsive since it does not represent a clear commitment to furnish the item at a specified price. Further, the price omission cannot be waived because the work covered by the added item is integrally related to and not practicably divisible from the other aspects of contract performance.

PROCUREMENT B-231204 June 22, 1988

Where contracting officer refers nonresponsibility determination to the Small Business Administration (SBA), but protester fails to file for a certificate of competency, the General Accounting Office (GAO) will not review the contracting officer's determination since such a review would in effect substitute GAO for SBA.

**PROCUREMENT**                      **B-231392**    **June 22, 1988**

Since as the fourth low offeror in a procurement in which price is the determining factor, the protester's direct economic interest is not affected by the award of the contract, the protester is not an interested party eligible to pursue a protest against award to the low offeror.

**PROCUREMENT** **B-231648** **June 22, 1988**

Protester alleging that agency's second request for best and final offers (BAFOs) was improper and that award should be based upon first round of BAFOs is not an interested party to protest where protester was not in line for award under first round of BAFOs and therefore has no direct economic interest which would be affected as a result of agency's failure to award a contract on the basis of the first round of BAFOs.

**PROCUREMENT**  
**Bid Protests**  
**Moot allegation**  
**GAO review**

**B-231648 Con't**  
**June 22, 1988**

Where protester alleges that agency unreasonably delayed the procurement for the benefit of another firm involved in the competition but the other firm has previously been excluded from the competitive range, protest is academic.

**PROCUREMENT**  
**Bid Protests**  
**Allegation**  
**Abandonment**

**B-230732 June 23, 1988**  
**88-1 CPD 603**

Where agency's report specifically addresses argument in the initial protest that proposal evaluation was flawed, and protester fails to rebut the agency's position in its comments on the agency's report, the issue is deemed abandoned.

**PROCUREMENT**  
**Competitive Negotiation**  
**Competitive advantage**  
**Conflicts of interest**  
**Outside employment**  
**Allegation substantiation**

Where evaluator is alleged to have conflict of interest due to general business interests, but there is no showing that the evaluator had conflict involving the proposed awardee or that the alleged general conflict resulted in flawed evaluation, protest is without merit.

**PROCUREMENT**                      **B-230753 June 23, 1988**  
    **Competitive Negotiation**      **88-1 CPD 604**  
    **Offers**  
        **Evaluation**  
            **Technical acceptability**

Agency determination to reject a proposal as technically unacceptable is reasonable where the proposal does not demonstrate adequate experience in the services being solicited nor adequate manpower to carry out those services, and takes exception to several solicitation requirements.

**PROCUREMENT**                      **B-230864 June 23, 1988**  
    **Bid Protests**                  **88-1 CPD 605**  
        **GAO procedures**  
            **Protest timeliness**  
                **10-day rule**

Protester's new and independent ground of protest is dismissed as untimely since it does not independently satisfy the timeliness rules of General Accounting Office's Bid Protest Regulations.

**PROCUREMENT**  
    **Competitive Negotiation**  
        **Sureties**  
            **Acceptability**

Contracting officer's rejection of individual sureties as nonresponsible is reasonable where certificates of sufficiency, contained in each sureties' affidavit of Individual Surety were questionable and all other attempts to verify the statement of assets of each surety were unsuccessful and cast further doubt on the veracity of the sureties.

**PROCUREMENT****B-228052.3 June 24, 1988****Bid Protests****88-1 CPD 606****GAO procedures****GAO decisions****Reconsideration**

Prior decision is affirmed where agency essentially disagrees with decision and alleges unspecified aspects of the record were overlooked in the decision, but presents no argument or information establishing that the decision was legally or factually erroneous.

**PROCUREMENT****B-230638 June 24, 1988****Bid Protests****88-1 CPD 607****GAO procedures****Interested parties**

A protester, which is a potential competitor if the protest is successful, is an "interested party" although no bid was submitted under the protested solicitation.

**PROCUREMENT****Socio-Economic Policies****Small business set-asides****Use****Administrative discretion**

A contracting officer's decision to procure carpet on an unrestricted basis, rather than through a small business set-aside, is not an abuse of discretion where the activity had no experience with any carpeting firms (large or small) experienced in delivery of such a large quantity in the time required, and the contracting officer rationally concluded that there was no reasonable expectation that offers would be received from two or more responsible small businesses.

**PROCUREMENT****B-231068 June 24, 1988****Bid Protests****88-1 CPD 608****GAO procedures****Protest timeliness****10-day rule**

An allegation raised for the first time in a protester's comments to the agency report is untimely, and will not be considered, where the allegation is not based on new information and is not a mere expansion of the original protest.

**PROCUREMENT****Competitive Negotiation****Requests for proposals****Amendments****Specifications****Modification**

An agency properly may amend a solicitation to relax a requirement and the General Accounting Office will not question an agency's decision to use less restrictive specifications unless there is evidence of favoritism, fraud, or intentional misconduct by agency officials.

**PROCUREMENT****B-231113 June 24, 1988****Specifications****88-1 CPD 609****Minimum needs standards****Competitive restrictions****Geographic restrictions****Justification**

Invitation for bids to provide meals and lodging to Army recruits may properly restrict bids to those from firms within one-mile radius of processing station and is not unduly restrictive where the restriction reflects the actual needs of the Army and the agency reasonably believes that adequate competition was available within the restricted area.



**PROCUREMENT**

**B-231171 June 24, 1988**

**Sealed Bidding**

**88-1 CPD 610**

**Bids**

**Responsiveness**

**Price omission**

**Taxes**

Where invitation for bid requires that bid prices include all applicable taxes, a bid which provides "Tax Not Included" without specifying the class and amount of tax excluded is nonresponsive.

**PROCUREMENT**

**B-197911 June 27, 1988**

**Payment/Discharge**

**Shipment**

**Losses**

**Common carriers**

**Notification**

Where a common carrier receives notice of additional lost items after delivery of a shipment of household goods and such notice is within 45 days of delivery, as prescribed by the Memorandum of Understanding under which the carrier and Navy agree to operate, the notice is timely, and a prima facie case of liability against the carrier cannot be avoided on the basis of untimely notice.

**PROCUREMENT**

**B-230212.2 June 27, 1988**

**Bid Protests**

**Conferences**

**Justification**

With respect to a complaint filed in the United States Claims Court raising an objection to the denial of requests for fact finding conferences in PRC Kentron, Inc., B-230212, June 7, 1988, 88-1 CPD ¶ 537, the General Accounting Office advised the Department of Justice that neither request fell within the purview of 4 C.F.R. § 21.5(b) (1987).

PROCUREMENT B-231388 June 27, 1988  
Socio-Economic Policies 88-1 CPD 611  
Small business  
set-asides  
Use  
Administrative discretion

Protest of contracting officer's decision to continue to set aside the procurement of items for small business concerns is denied where the record indicates that based on the prior successful set-asides the contracting officer had a reasonable expectation that bids would be received from at least two small business concerns and that award would be made at a fair market price, i.e., a reasonable price under normal market conditions.

PROCUREMENT B-230298.5 June 28, 1988  
Sealed Bidding 88-1 CPD 612  
Bids  
Evaluation  
Royalties  
Cost evaluation

Addition of royalty fee evaluation factor to bids is not inconsistent with Federal Acquisition Regulation (FAR) general policy proscription that agencies shall provide for financial development incentives and sharing of savings on value engineering change proposals (VECPs) with contractors; royalty fee evaluation factor is a method of funding the contractor's share of VECP savings, a VECP implementing procedure allowed by the FAR.

**PROCUREMENT****B-230299 June 28, 1988****Socio-Economic Policies****88-1 CPD 613****Small businesses****Contract awards****Pending protests****Justification**

Protest that procuring agency made award of contract prior to the expiration of waiting period for Small Business Administration consideration of issuance of a Certificate of Competency is sustained. The procuring agency knew SBA was on the verge of completing its review and was likely to issue a COC and yet made the award.

**PROCUREMENT****B-230672 June 28, 1988****Contractor Qualification 88-1 CPD 614****Responsibility****Contracting officer findings****Affirmative determination****GAO review**

Protest that contracting agency failed to consider findings in civil action indicating company's wrongdoing to determine firm's responsibility is denied where contracting agency considered criminal conviction concerning the same matters as involved in the civil proceeding and based its affirmative determination of responsibility on a settlement agreement by which the firm took corrective action to remedy its past misconduct.

**PROCUREMENT****B-230707 June 28, 1988****Competitive Negotiation 88-1 CPD 615****Offers****Late submission****Acceptance criteria**

Contracting specialist's reliance on the Naval Observatory master clock to determine when closing time had passed was reasonable and proposal submitted after the designated time was properly rejected as late.

**B-231746 June 28, 1988**

88-1 CPD 616

## Responsiveness

### Acceptance time periods

## Deviation

**B-231345    June 29, 1988**

## Contract Management

## Contract administration

### Convenience termination

**Federal procurement regulations/laws**

## Notification procedures

**B-230036.2 June 30, 1988**

## Bid Protests

## GAO procedures

## GAO decisions

## Reconsideration

Request for reconsideration that primarily reiterates previously rejected arguments does not provide a basis for reconsideration of our original decision.

**PROCUREMENT** **B-230297 June 30, 1987**  
**Noncompetitive Negotiation**  
**Contract awards**  
**Sole sources**  
**Propriety**

Where an agency is required by language in an appropriations act to obligate funds for light field artillery technical data systems (LFATDS) by a date approximately 3 months after passage of the act, a sole-source award is justified where there is only one source to which a contract for LFATDS can be awarded by the date specified for obligation of the funds.

**PROCUREMENT** **B-230919 June 30, 1988**  
**Bid Protests**  
**Information disclosure**  
**Competitive advantage**

The General Accounting Office will not recommend a noncompetitive award to the incumbent contractor, who protests that an agency disclosed its proprietary information in a solicitation, where the information does not describe the product or service being procured, but only reflects the protester's purported staffing for its contract work.

**PROCUREMENT** **B-231420.3 June 30, 1988**  
**Bid Protests**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

To be considered, a request for reconsideration of a prior decision of the General Accounting Office must indicate that the decision contained errors of fact, or law, or information not previously considered that would warrant its reversal or modification. The repetition of arguments made during resolution of the original protest, or mere disagreement with the decision, does not meet this standard.

**PROCUREMENT**

**B-231420.3 Con't**

**Bid Protests**

**June 30, 1988**

**GAO procedures**

**Protest timeliness**

**10-day rule**

Protest is untimely because not diligently pursued where the protester waited over 2 months after it learned of its basis for protest to request the release of information under the Freedom of Information Act.

## MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS                      B-226126.3    June 7, 1988  
Federal Administrative/Legislative Matters  
Administrative agencies  
Service contracts  
Experts/consultants  
Congressional oversight

The Inspector General reporting provision located at 31 U.S.C. § 1114 requiring each agency's Inspector General or comparable official to submit to Congress an evaluation of the agency's progress in establishing effective management controls and improving the accuracy and completeness of information provided to the Federal Procurement Data System on contracts for consulting services is current law. It is the view of some agencies that the reporting requirement no longer exists due to the repeal in the Congressional Reports Elimination Act of 1982 of two appropriation measures containing the IG reporting requirement. The Reports Elimination Act cited section 28 of title 31 as the United States Code reference for those two provisions. At the time of the repeal, however, title 31 had been revised and the reporting provision enacted into positive law and codified at 31 U.S.C. § 1114. Congress has not repealed section 1114 of title 31, thus leaving the reporting requirement in effect.

**MISCELLANEOUS TOPICS**                      **B-231210 June 7, 1988**  
**Federal Administrative/Legislative Matters**  
**Government corporations**  
**Legal services**  
**Lobbying**  
**Congress**

Section 42 U.S.C. § 2996e(c)(2) prohibits the Legal Services Corporation from attempting to influence legislation or appropriations under consideration by the Congress. The provision contains an exception that permits personnel of the Corporation to testify and make appropriate communications to the Congress on legislation affecting the Corporation. This exception should not be interpreted as permitting the Corporation to retain private law firms as agents to lobby on behalf of the Corporation.

**MISCELLANEOUS TOPICS**                      **B-211373.2 June 30, 1988**  
**Federal Administrative/Legislative Matters**  
**Executive Branch personnel**  
**Details**  
**Congressional oversight**  
**Applicability**

The reporting requirement contained in Public Law 100-202, requiring executive agencies to submit to Congress annual reports of their officers and employees detailed to other agencies during each fiscal year, applies to the State Department since it is an executive agency. The State Department's Bureau of Intelligence and Research is specifically exempt from reporting under the statute.



**MISCELLANEOUS TOPICS**

**B-211373.2 Con't**

**Federal Administrative/**

**June 30, 1988**

**Legislative Matters**

**Executive Branch personnel**

**Details**

**Reimbursement**

The statutory language of 22 U.S.C. § 3983(b)(2) does not require that reimbursement be made for the details of Foreign Service officers to other agencies. The law states that reimbursement "may" be made for all or any part of the cost of salaries of the individuals assigned under the detail provision, giving discretion regarding payment to the agencies.

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